

HOUSE No. 2485

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to pension reform..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Subdivision (2) of Section 23 of Chapter 32 of the General Laws is hereby
2 amended by striking out sub-paragraph (b) and inserting in place thereof the following: -

3 (b) The board of each system shall invest and reinvest the funds of such system in the
4 PRIT Fund pursuant to subdivision (8) of section twenty two, in the PRIT Fund by purchasing
5 shares of said fund, as provided for in the trust agreement adopted by the PRIM Board pursuant
6 to subdivision (2A) or as follows:-

7 (i) in accordance with the standards set forth in subdivision (3), provided that: -

8 (A) no investment of funds shall be made in stocks, securities or other obligations of any
9 company which derives more than 15 per cent of its revenues from the sale of tobacco products.

10 (B) in investing such funds the board shall employ an investment manager or investment
11 managers who shall invest the funds of the system.

12 (C) no funds shall be invested directly in mortgages or collateral loans.

No investment of funds shall take place until board has received from the commission an acknowledgement of receipt of the following:-

(a) certification that, in making the selection, the board has complied with the process established in section 23A;

(b) a copy of the vendor certification required under section 23A;

(c) copies of disclosure forms submitted by the selected vendor;

(d) a certification that the investment is not a prohibited investment as set forth in regulations of the commission;

(e) in the event that the board has retained a consultant, a copy of the consultant reports pertaining to the investment and the selected vendor;

(f) a copy of the board certification required under section 23A.

The commission may withhold the acknowledgement if it determines that it is in the best interest of the retirement system provided, however, that it must so notify the board within ten days of receipt of completed documents as required by this section.

Prior to the retention of an investment consultant the board must receive from the commission an acknowledgement of receipt of the following:-

(a) certification that, in making the selection, the board has complied with the process established in section 23A;

(b) copy of the vendor certification required under section 23A;

(c) copies of disclosure forms submitted by the selected consultant;

(d) copy of the board certification required under section 23A.

Section 2. Section 50 of Chapter 7 of the General Laws as appearing in the 2004 Official Edition is hereby amended by striking out lines 68 through 69 inclusive.

Section 3. Clause 19 of paragraph (b) of Section (1) of Chapter 30B of the General Laws is hereby amended by adding the following:-

provided, however, that such procurements shall take place in accordance with the provisions of section 23A of chapter 32.

Section 4. Chapter 32 of the General Laws is hereby amended by adding the following section: -

Section 21A. (a) As used in this section the following words shall, unless the context requires otherwise, have the following meanings: -

"Affiliates", entities which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

"Commission", the Public Employee Retirement Administration Commission.

"Contract", a contract for the furnishing of supplies or services to any retirement board.

"Debarment", an exclusion from contracting or subcontracting with a retirement board for a reasonable, specified period of time commensurate with the seriousness of the offense.

"Person", any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

"Retirement board", a board established pursuant to the provisions of chapter 32, the provisions of chapter 34B or the Massachusetts water resources authority retirement board, excluding the pension reserves investment management board.

"Suspension", the temporary disqualification of a vendor who is suspected upon adequate evidence of engaging or having engaged in conduct which constitutes grounds for debarment.

"Vendor", any person that has furnished or seeks to furnish supplies or services under a contract with a retirement board.

(b) The Commission shall establish and maintain a consolidated list of vendors to whom contracts shall not be awarded and from whom offers, bids, or proposals shall not be solicited. The list shall show at a minimum the following information: (1) the names of those persons debarred or suspended in alphabetical order with appropriate cross reference where more than one name is involved in a single debarment or suspension; (2) the basis of authority for each debarment or suspension; (3) the extent of restrictions imposed; (4) the termination date of each debarment or suspension; and (5) in the case of a suspension, the hearing date, if and when set, for debarment proceedings.

The commission shall cause the list to be kept current by the issuance of notices of additions and deletions. The list shall be published on a periodic basis, together with notices of additions and deletions therefrom, in the goods and services bulletin and the central register published by the state secretary and in such other publications as the commission shall designate.

The commission shall also forward said list to the inspector general, the attorney general, and the state auditor.

(c) Debarment may be imposed for the following causes:

(1) conviction or final adjudication by a court or administrative agency of competent jurisdiction of any of the following offenses: (i) a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract; (ii) a criminal offense involving embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the vendor's present responsibility as a public contractor; (iii) a violation of state or federal antitrust laws arising out of the submission of bids or proposals; (iv) a violation of chapter two hundred and sixty-eight A; (v) a violation of chapter thirty – two-.

(2) substantial evidence, as determined by the commission, of any of the following acts:

(i) willfully supplying materially false information incident to obtaining or attempting to obtain or performing any public contract or subcontract; (ii) willful failure to comply with record-keeping and accounting requirements prescribed by law or regulation; (iii) a record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more public contracts, provided that such failure to perform or unsatisfactory performance has occurred within a reasonable period of time preceding the determination to debar and provided further that such failure to perform or unsatisfactory performance was not caused by factors beyond the vendor's control; (iv) the submission to the board or the commission of an inaccurate disclosure statement (v); the failure to disclose to the board and the commission any

94 compensation provided to any person in regards to attempting to obtain or the performance of a
95 public contract or subcontract, including, but not limited to, compensation provided by third
96 parties retained by the vendor to any other person; (vi) any other cause affecting the
97 responsibility of a vendor which the commission determines to be of such a serious and
98 compelling nature as to warrant debarment.

99 (d) No vendor may be suspended unless the commission has first informed the vendor by
100 written notice of the proposed suspension mailed by registered or certified mail to the vendor's
101 last known address, except when the commission determines that immediate suspension is
102 necessary to prevent serious harm to the retirement system, in which case the suspension shall
103 take effect immediately upon signing by the executive director of an order of suspension, and
104 notice shall be mailed to the vendor at the earliest opportunity. The notice shall inform the
105 vendor of the reasons for the proposed suspension and shall state that the vendor may within
106 fourteen days respond in writing and may in such response request a hearing. The commission
107 may extend the period for response at the request of the vendor. The commission shall determine
108 whether to impose the suspension or, in the case of an emergency suspension imposed prior to
109 notice to the vendor, whether to continue the suspension after reviewing the vendor's response, if
110 any, and making such investigation as the commission determines is necessary and appropriate.
111 An indictment, or any information or other filing by a public agency charging a criminal offense,
112 for any of the offenses listed in paragraph (1) of subsection (c) shall constitute adequate evidence
113 to support a suspension.

114 If the vendor requests a hearing, and the suspension is not based on an indictment, the
115 commission shall conduct a hearing according to the rules for the conduct of adjudicatory
116 hearings established by the secretary of administration pursuant to chapter thirty A. Such hearing

shall be initiated within thirty days of the imposition of the suspension, unless the vendor requests that the hearing be delayed. Officers and employees of the commission and records of the commission shall not be subject to subpoena for such hearing, if in the opinion of the commission production of records or testimony would prejudice any pending investigation by the commission.

A suspension shall not exceed twelve months unless a pending administrative or judicial proceeding in which the vendor is a party may result in a conviction or final adjudication of an offense listed in paragraph (1) of subsection (c).

(e) No vendor may be debarred under this section unless the commission has first informed the vendor by written notice of the proposed debarment mailed by registered or certified mail to the vendor's last known address. The notice shall inform the vendor of the reasons for the debarment and shall state that the vendor will be accorded an opportunity for a hearing if the vendor so requests within fourteen days of receipt of the notice. A hearing requested under this paragraph shall be conducted by the commission within sixty days of receipt of the request, unless the commission grants additional time therefore at the request of the vendor. The hearing shall be conducted according to the rules for the conduct of adjudicatory hearings established by the commissioner of administration pursuant to chapter thirty A. A debarment shall not be imposed until (i) fourteen days after receipt by the vendor of notice of the proposed debarment if no hearing is requested, or (ii) the issuance of a written decision by the commission which makes specific findings that there is sufficient evidence to support the debarment and that debarment for the period specified in the decision is required to protect the integrity of the public contracting process. A vendor shall be notified forthwith of the decision by registered or certified mail, and of the vendor's right to judicial review in the event that the

140 decision is adverse to the vendor. If a suspension precedes a debarment, the suspension period
141 shall be considered in determining the debarment period.

142 (f) A debarment or suspension may include all known affiliates of a vendor. The decision
143 to include a known affiliate within the scope of a debarment or suspension shall be made on a
144 case-by-case basis, after giving due regard to all relevant facts and circumstances. The offense or
145 act of an individual justifying suspension, or the evidence justifying a suspension, may be
146 imputed to the entity with which the individual is connected when such offense or act occurred in
147 connection with the individual's performance of duties for or on behalf of the entity or with the
148 knowledge, approval, or acquiescence of the entity or one or more of its principals. The entity's
149 acceptance of the benefits derived from the conduct shall be evidence of such knowledge,
150 approval, or acquiescence. The offense or act of an entity justifying debarment, or the evidence
151 justifying a suspension, may be imputed to any officer, director, shareholder, partner, employee
152 or other individual associated with the entity who participated in, knew of, or had reason to know
153 of the entity's act. An entity may not be suspended or debarred except in accordance with the
154 procedures set forth in this section.

155 (g) In determining whether to debar a vendor, or the period of a debarment, all mitigating
156 facts and circumstances shall be taken into consideration. A debarment may be removed or the
157 period thereof may be reduced by the commission upon the submission of an application
158 supported by documentary evidence setting forth appropriate grounds for the granting of relief,
159 such as newly discovered material evidence, reversal of a judgment or conviction, bona fide
160 change of ownership or management, or the elimination of the cause for which the debarment
161 was imposed.

(h) During the period for which a person has been debarred or suspended, that person shall not submit or cause to be submitted offers, bids, or proposals to any retirement board, nor shall any retirement board solicit or consider offers, bids, or proposals from, nor execute, renew, or extend any contract with, a debarred or suspended vendor, and a vendor shall not contract for services from a debarred or suspended subcontractor on any contract with a retirement system.

Section 5. Subdivision (3) of Section 23 of Chapter 32 of the General Laws is hereby amended by adding the following:

Each member of a retirement board established pursuant to the provisions of this chapter shall upon the commencement of their term file with the commission a statement acknowledging that they are aware of and will comply with the standards set forth in chapter 268A of the general laws, the provisions of this chapter and the provisions of regulations promulgated pursuant to this chapter.

Section 6. Chapter 32 of the General Laws is hereby amended by adding the following section:-

Section 20C. (a) Every member of a retirement board shall file a statement of financial interests for the preceding calendar year with the commission within thirty days after becoming a member of a retirement board, on or before May first of each year thereafter that such person is a member of a retirement board and on or before May first of the year after such person ceases to be a member of a retirement board;

(b) The commission shall, upon receipt of a statement of financial interests pursuant to the provisions of this section, issue to the person filing such statement a receipt verifying the fact that a statement of financial interests has been filed and a receipted copy of such statement.

(c) No member of a retirement board shall be allowed to continue in his duties unless he has filed a statement of financial interests with the commission as required by this section.

(d) The statement of financial interests filed pursuant to the provisions of this section shall be on a form prescribed by the commission and shall be signed under penalty of perjury by the reporting person.

(e) Reporting persons shall disclose, to the best of their knowledge, the following information for the preceding calendar year, or as of the last day of said year with respect to the information required by clauses (2), (3) and (6) below; such persons shall also disclose the same information with respect to their immediate family provided, however, that no amount need be given for such information with regard to the reporting person's immediate family:

(1) the name and address of, the nature of association with, the share of equity in, if applicable, of each business with which he is associated;

(2) the identity of all securities and other investments with a fair market value of greater than one thousand dollars which were beneficially owned, not otherwise reportable hereunder;

(3) the name and address of each creditor to whom more than one thousand dollars was owed; provided, however, that obligations arising out of retail installment transactions, educational loans, medical and dental expenses, debts incurred in the ordinary course of business, and any obligation to make alimony or support payments, shall not be reported; and provided, further, that such information need not be reported if the creditor is a relative of the reporting person within the third degree of consanguinity or affinity;

(4) the name and address of the source, and the cash value of any reimbursement for expenses aggregating more than one hundred dollars in the calendar year if the recipient is a member of a retirement board and the source of such reimbursement is a person having a direct interest in a matter before the retirement board of which the recipient is a member;

(5) the name and address of the donor, and the fair market value, if determinable, of any gifts in the calendar year, if the recipient is a member of a retirement board and the source of such gift(s) is a person having a direct interest in a matter before the retirement board of which the recipient is a member;

(6) the name and address of the source, and the fair market value, of any honoraria aggregating more than one hundred dollars if the recipient is a member of a retirement board and the source of such honoraria is a person having a direct interest in a matter before a retirement board;

(7) the name and address of any creditor who has forgiven an indebtedness of over one thousand dollars, and the amount forgiven if the creditor is a person having a direct interest in a matter before a retirement board; provided, however, that no such information need be reported if the creditor is a relative within the third degree of consanguinity or affinity of the reporting person, or the spouse of such a relative; and ,

(8) the name and address of any business from which the reporting person is taking a leave of absence;

Nothing in this section shall be construed to require the disclosure of information, which is privileged by law.

Failure of a reporting person to file a statement of financial interests within ten days after receiving notice in writing from the Commission which states in detail the deficiency and the penalties for failure to file a statement of financial interests, or the filing of an incomplete statement of financial interests after receipt of such a notice shall result in the removal of the reporting person from the board and he or she shall not be permitted to serve on any retirement board established pursuant to the provisions of this chapter. Said failure is a violation of this chapter and the commission may initiate appropriate proceedings pursuant to the provisions of section twenty-four.

Section 7. Clause 26th of Section 7 of Chapter 4 of the General Laws is hereby amended by adding the following sub-clause:-

(q) statements filed pursuant to Section 20C of Chapter 32.

Section 8. Section 20 of Chapter 32 of the General Laws is hereby amended by adding the following paragraph:-

(4 7/8 C) No employee, contractor, vendor or any person receiving any remuneration, financial benefit or consideration of any kind, other than a retirement benefit or the statutory stipend for serving on the retirement board, from a retirement board or from any person doing business with a retirement board shall be eligible to serve on a retirement board provided, however, that an employee of a retirement board may serve on a retirement board other than the retirement board by which he or she is employed and provided, further, that the provisions of this paragraph shall take effect at the completion of the board members current term.

Section 9. Paragraph (b) of Section 19 of Chapter 34B of the General Laws is hereby amended in line 14 by inserting the following after the word "32":-

247 Provided that no employee, contractor, vendor or person receiving any remuneration,
248 financial benefit or consideration of any kind, other than a retirement benefit or the statutory
249 stipend for serving on the retirement board, from a retirement board or from any person doing
250 business with a retirement board shall be eligible to serve on a retirement board provided,
251 however, that an employee of a retirement board may serve on a retirement board other than the
252 retirement board by which he or she is employed and provided, further, that the provisions of this
253 paragraph shall take effect at the completion of the board members current term.

254 Section 10. Chapter 32 of the General Laws is hereby amended by adding the following
255 section –

256 Section 23A (a) This section shall apply to every retirement board contract for the
257 procurement of investment, actuarial, legal and accounting services.

258 As used in this section the following words shall, unless the context requires otherwise,
259 have the following meanings:-

260 "Contract", all types of agreement for the procurement of services, regardless of what the
261 parties may call the agreement.

262 "Contractor", a person having a contract with the retirement board.

263 "Retirement board", a board established under the provisions of this chapter , the
264 provisions of chapter thirty – four B or the massachusetts water resources authority retirement
265 board excluding the pension reserves investment management board.

266 "Majority vote", as to any action by or on behalf of a retirement board, a simple majority
267 of the board.

268 "Minor informalities", minor deviations, insignificant mistakes, and matters of form
269 rather than substance of the proposal, or contract document which can be waived or corrected
270 without prejudice to other offerors, potential offerors, or the retirement board.

271 "Person", any natural person, business, partnership, corporation, union, committee, club,
272 or other organization, entity or group of individuals.

273 "Procurement", acquiring a service, and all functions that pertain to the obtaining of a
274 service, including description of requirements, selection and solicitation of sources, preparation
275 and award of contract, and all phases of contract administration.

276 "Procurement officer", an individual duly authorized by the retirement board to assist in a
277 procurement.

278 "Proposal", a written offer to provide a service at a stated price submitted in response to a
279 request for proposals.

280 "Purchase description", the words used in a solicitation to describe the services to be
281 purchased, including specifications attached to or incorporated by reference into the solicitation.

282 "Request for proposals", the documents utilized for soliciting proposals, including
283 documents attached or incorporated by reference.

284 "Responsible bidder or offeror", a person who has the capability to perform fully the
285 contract requirements, and the integrity and reliability which assures good faith performance.

286 "Responsive bidder or offeror", a person who has submitted a bid or proposal which
287 conforms in all respects to the request for proposals.

"Services", the furnishing of labor, time, or effort by a contractor, not involving the furnishing of a specific end product other than reports. This term shall not include employment agreements, collective bargaining agreements, or grant agreements.

(1) A retirement board shall enter into procurement contracts for investment, actuarial, legal and accounting services utilizing competitive sealed proposals, in accordance with the provisions of this section.

(2) A retirement board that awards a contract shall maintain a file on each such contract and shall include in such file a copy of all written documents required by this section. Written documents required by this section shall be retained by the retirement board for at least six years from the date of final payment under the contract.

(b) The retirement board or its procurement officer shall give public notice of the request for proposals and a reasonable time prior to the date for the opening of proposals. The notice shall:

(1) indicate where, when and for how long the request for proposal may be obtained;

(2) describe the service desired, and reserve the right of the retirement board to reject any or all bids;

(3) remain posted, for at least two weeks, in a conspicuous place in or near the offices of the retirement board until the time specified in the request for proposals; and

(4) be published at least once, not less than two weeks prior to the time specified for the receipt of proposals, in a newspaper of general circulation within the area served by the

308 retirement board and in the case of a procurement for investment, accounting, actuarial or legal
309 services in a publication of interest to those engaged in providing such services.

310 The retirement board or its procurement officer shall also place the notice in any
311 publication established by the state secretary for the advertisement of such procurements.

312 The retirement board or its procurement officer may distribute copies of the notice to
313 prospective bidders, and may compile and maintain lists of prospective bidders to which notices
314 may be sent.

315 (c) The retirement board shall unconditionally accept a proposal without alteration or
316 correction, except as provided in this paragraph. A bidder may correct, modify, or withdraw a
317 proposal by written notice received in the office designated in the request for proposals prior to
318 the time and date set for the proposal opening. After proposal opening, a bidder may not change
319 the price or any other provision of the proposal in a manner prejudicial to the interests of the
320 retirement board or fair competition. The retirement board shall waive minor informalities or
321 allow the bidder to correct them. If a mistake and the intended proposal are clearly evident on the
322 face of the proposal document, the procurement officer shall correct the mistake to reflect the
323 intended correct proposal and so notify the bidder in writing, and the bidder may not withdraw
324 the proposal. A bidder may withdraw a proposal if a mistake is clearly evident on the face of the
325 proposal document but the intended correct proposal is not similarly evident.

326 (d) The retirement board shall solicit proposals through a request for proposals. The
327 request for proposals shall include:

(1) the time and date for receipt of proposals, the address of the office to which the proposals are to be delivered, the maximum time for proposal acceptance by the retirement board;

(2) the purchase description and all evaluation criteria that will be utilized pursuant to paragraph (d); and

(3) all contractual terms and conditions applicable to the procurement provided that the contract may incorporate by reference a plan submitted by the selected offeror for providing the required services.

The request for proposals may incorporate documents by reference; provided, however, that the request for proposals specifies where prospective offerors may obtain the documents. The retirement board or its procurement officer shall make copies of the request for proposals available to all persons on an equal basis.

(e) The retirement board or its procurement officer shall not open the proposals publicly, but shall open them in the presence of one or more witnesses at the time specified in the request for proposals. Notwithstanding the provisions of section seven of chapter four, until the completion of the evaluations, or until the time for acceptance specified in the request for proposals, whichever occurs earlier, the contents of the proposals shall remain confidential and shall not be disclosed to competing offerors. At the opening of proposals the retirement board or its procurement officer shall prepare a register of proposals which shall include the name of each offeror and the number of modifications, if any, received. The register of proposals shall be open for public inspection.

(f) The retirement board or its consultant retained pursuant to the provisions of this chapter shall be responsible for the initial evaluation of the proposals. The retirement board or its consultant retained pursuant to the provisions of this chapter shall prepare their initial evaluations based solely on the criteria set forth in the request for proposals. The evaluations shall specify in writing:

(1) for each evaluation criterion, a rating of each proposal as highly advantageous, advantageous, not advantageous, or unacceptable, and the reasons for the rating;

(2) a composite rating for each proposal, and the reasons for the rating; and

(3) revisions, if any, to each proposed plan for providing the required services which should be obtained by negotiation prior to awarding the contract to the offeror of the proposal.

In the event the initial evaluation is conducted by a consultant retained pursuant to the provisions of this chapter said consultant shall review all initial evaluations with the retirement board and provide to each member of the retirement board the initial evaluation of each proposal.

(g) The retirement board shall determine the most advantageous proposal from a responsible and responsive offeror taking into consideration price and the evaluation criteria set forth in the request for proposals. The retirement board shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. The parties may extend the time for acceptance by mutual agreement. The retirement board may condition an award on successful negotiation of the revisions specified in the evaluation, and shall explain in writing the reasons for omitting any such revision from a plan incorporated by reference in the contract.

(h) In the event of a competitive process to select an investment service provider the request for proposals shall include mandatory contractual terms and conditions to be incorporated into the contract including provisions stating that the contractor is a fiduciary with respect to the funds which the contractor invests on behalf of the retirement board, provisions stating that the contractor shall not be indemnified by the retirement board, provisions requiring the contractor to annually inform the commission and the board of any arrangements in oral or in writing, for compensation or other benefit received or expected to be received by the contractor or a related person from others in connection with the contractors services to the retirement board or any other client, provisions requiring the contractor to annually disclose to the commission and the retirement board any compensation, in whatever form, paid or expected to be paid, directly or indirectly, by the contractor or a related person to others in relation to the contractors services to the retirement board or any other client, and provisions requiring the contractor to annually disclose to the commission and the retirement board in writing any conflict of interest the contractor may have that could reasonably be expected to impair the contractor's ability to render unbiased and objective services to the retirement board. Other mandatory contractual terms and conditions shall address investment objectives, brokerage practices, proxy voting and tender offer exercise procedures, terms of employment and termination provisions. The retirement board shall make a preliminary determination of the most advantageous proposal from a responsible and responsive offeror taking into consideration price and the evaluation criteria set forth in the request for proposals. The retirement board or its duly designated agent, subject to the approval of the retirement board, may negotiate all terms of the contract not deemed mandatory or non-negotiable with such offeror. If, after negotiation with such offeror, the retirement board in consultation with its duly designated agent and its

consultant retained pursuant to the provisions of this chapter determines that it is in the best interests of the retirement board, the retirement board in consultation with its consultant retained pursuant to the provisions of this chapter may determine the proposal which is the next most advantageous proposal from a responsible and responsive offeror taking into consideration price and the evaluation criteria set forth in the request for proposals, and may negotiate all terms of the contract with such offeror. The retirement board shall award the contract to the most advantageous proposal from a responsible and responsive offeror taking into consideration price, the evaluated criteria set forth in the request for proposals, and the terms of the negotiated contract. The retirement board shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. The time for acceptance may be extended for up to 45 days by mutual agreement between the retirement board and the responsible and responsive offeror offering the most advantageous proposal as determined by the retirement board.

On or before January 1 of each year the contractor shall file the disclosures required herein with the board and the commission. Failure to file disclosures or the filing of inaccurate disclosures shall subject the contractor to proceedings under section 21A.

(6) The retirement board may cancel a request for proposals or may reject in whole or in part any and all proposals when the retirement board determines that cancellation or rejection serves the best interests of the system. The retirement board shall state in writing the reason for a cancellation or rejection.

(7) A person submitting a proposal for the procurement or disposal of services to any retirement board shall certify in writing on the proposal as follows:

The undersigned certifies under penalties of perjury that this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

(Signature of individual submitting bid or proposal)

(Name of business)

(8) Each retirement board member shall certify to the commission in writing with respect to a procurement subject to the provisions of this section, as follows:

The undersigned certifies under penalties of perjury that, to the best of his/her knowledge and belief, this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

(Signature of individual retirement board member)

(Name of retirement board)

(9) No person shall cause or conspire to cause the splitting or division of any request for proposals, proposal, solicitation, or quotation for the purpose of evading a requirement of this section.

(10) Unless otherwise provided by law and subject to paragraph (a), a retirement board may enter into a contract for any period of time which serves the best interests of the retirement board; provided, however, that the retirement board shall include in the solicitation the term of the contract and conditions of renewal, extension or purchase, if any.

(a) A retirement board shall not award a contract for a term exceeding five years, including any renewal, extension, or option provided, however, that a retirement board may participate in a limited partnership, trust or other entity with a term for a period longer than five years as part of an investment of system assets.

When a contract is to contain an option for renewal, extension, or purchase, the solicitation shall include notice of the provision. The retirement board shall retain sole discretion in exercising the option, and no exercise of an option shall be subject to agreement or acceptance by the contractor.

(b) The retirement board shall not exercise an option for renewal, extension or purchase unless the retirement board, after reasonable investigation of costs and benefits, has determined in writing that the exercise of the option is more advantageous than alternate means of procuring comparable services.

(11) All specifications shall be written in a manner which describes the requirements to be met without having the effect of exclusively requiring a proprietary service, or a procurement from a sole source.

(12) All contracts shall be in writing, and the retirement board shall make no payment for a service rendered prior to the execution of such contract.

(a) A contract made in violation of this section shall not be valid, and the retirement board shall make no payment under such contract. Minor informalities shall not require invalidation of a contract.

(b) A person who causes or conspires with another to cause a contract to be solicited or awarded in violation of a provision of this section shall forfeit and pay to the appropriate retirement board a sum of not more than two thousand dollars for each violation. In addition, the person shall pay double the amount of damages sustained by the retirement board by reason of the violation, together with the costs of any action. If more than one person participates in the violation, the damages and costs may be apportioned among them.

(c) The commission or the retirement board shall have authority to institute a civil action to enforce paragraph (b).

Section 11. Section 23 of Chapter 32 of the General Laws is hereby amended by striking out subdivision (4) and inserting in place thereof the following: -

(4) If the commission determines that a board of any retirement system has violated or neglected to comply with any provisions of this chapter, or the rules and regulations promulgated by the Commission, the Commission may determine that such system should be managed in accordance with orders of said commission. The commission is hereby authorized to appoint a committee consisting of three members, two of whom shall be members or designees of the commission and one who shall be a member of a retirement board other than the board subject to the commission determination chosen by the commission from a list of three nominees provided

by the Massachusetts Association of Contributory Retirement Systems (MACRS), to oversee any board that is responsible for the administration of any such system. Based upon the recommendation of said committee the commission shall, direct the board to take or desist from any action in order to insure that the system is managed with reasonable care, skill, prudence and diligence. Such direction may include, but is not limited to, the following:-

- (a) transfer of assets to the PRIT Fund;
- (b) termination of contracts;
- (c) approval or denial of retirement benefits;
- (d) employment or termination of employees; and,
- (e) conduct a fiduciary audit

Any person receiving a notice from the commission as set out above shall not have a right to appeal the receipt of such notice to the Contributory Retirement Appeal Board. Any person receiving any communication, either verbal or written, subsequent to the notice as required by this section in connection with the same matter shall not have a right to appeal the receipt of such communication to the Contributory Retirement Appeal Board. Any person aggrieved by any action taken, notice made or determination rendered by the commission in connection with this section shall have a right to appeal to the superior court, in accord with Section 16(6) of Chapter 32.

Section 12. Subdivision (4) of Section 16 of Chapter 32 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after the word “fulfilled”,

498 in line 99, the following words:- and matters subject to review by the superior court as provided
499 for in subdivision (6).

500 Section 13. Section 16 of Chapter 32 of the General laws, as appearing in the 2004
501 Official Edition, is hereby amended by adding the following subdivision:-

502 (6) The commission may institute appropriate proceedings in the superior court for
503 enforcement of its final orders or decisions issued pursuant to subdivision (4) of section 23 of
504 chapter 32. Any party aggrieved by a final order or decision of the commission pursuant to
505 subdivision (4) of section 23 of chapter 32 may institute proceedings for judicial review in the
506 superior court within thirty days after receipt of such order or decision. Any proceedings in the
507 superior court shall, insofar as applicable, be governed by the provisions of section fourteen of
508 chapter thirty A, and may be instituted in the superior court for the county (a) where the parties
509 or any of them reside or have their principal place of business within the commonwealth, or (b)
510 where the commission has its principal place of business, or (c) of Suffolk. The commencement
511 of such proceedings shall not, unless specifically ordered by the court, operate as a stay of the
512 commission's order or decision. If the commission, pursuant to the authority granted by section
513 24(1) of chapter 32, seeks to compel the observance of or restrain the violation of the provisions
514 of Sections 1 to 28, inclusive, a party aggrieved by such an action may appeal to the superior
515 court in accord with the provisions of section 14 of chapter 30A. If an action pursuant to Section
516 24 (1) has already been instituted in the superior court, the person's right to review shall flow
517 from the superior court case which has already begun.

Section 14. Paragraph (a) of subdivision (6) of Section 20 of Chapter 32 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out lines 842 through 845 inclusive and inserting in place thereof the following: -

(a) The elected and appointed members of any city, town, county, regional, district, or authority retirement board upon acceptance of the appropriate legislative body shall receive a stipend provided, however, that said stipend shall not be less than three thousands dollars per annum nor exceed seven thousand five hundred dollars per annum; provided further,

Section 15. Said subdivision, as so appearing, is hereby further amended in line 853 by striking out the words “three thousand” and inserting in place thereof the word “seven thousand five hundred”.

Section 16. Section 20 of Chapter 32 of the General Laws is hereby amended by adding the following sub-division:-

(7) In order to serve as a member of a retirement board an individual shall comply with the provisions of this subdivision.

Elected or appointed members shall be required to undertake four hours of training annually sponsored by the commission. The commission shall offer at least four opportunities during the year for board members to meet this requirement at times and places of convenience throughout the state. The commission may offer this education or may contract with other parties to provide such training. The training curriculum shall, at a minimum, include the topics of fiduciary responsibility, ethical conduct, and conflict-of-interest.

538 Elected or appointed members shall also be required to undertake an additional four
539 hours training annually as prescribed by the commission provided by the Massachusetts
540 Association of Contributory Retirement Systems or other local, state, regional and national
541 organizations recognized by the commission as having expertise in retirement issues of
542 importance to retirement board members or other entities, on topics acceptable as the
543 commission may from time to time determine. The commission shall certify such organizations
544 as appropriate for conducting such training upon application to the commission.

545 The commission shall provide retirement boards with a statement of completion of
546 education form on or before December 31 of each year. The board shall provide the forms to
547 their members. The form shall state under the pains and penalties of perjury whether or not the
548 retirement board member has undertaken the combined eight hours of continuing education
549 required by this sub-division. Retirement board members shall submit the completed form by
550 January 15 of the year following.

551 Any retirement board member who without good cause as determined by the commission
552 has failed to file a statement of completion of education form with PERAC by January 15 shall
553 be notified by PERAC by February 15 of the failure to file. The commission will afford the
554 board member 30 days to provide just cause for why he or she did not file the required form.
555 Failure to provide acceptable justification as determined by the commission for not filing the
556 form in a timely manner within 30 days shall result in suspension of voting rights until the form
557 is successfully completed. The commission shall notify the retirement board of the suspension of
558 voting rights of the board member in question and that board member shall not be entitled to vote
559 on any matter before the retirement board.

560 Any retirement board member who without good cause after review by the commission
561 has been determined to have not successfully completed the aforementioned continuing
562 education requirements shall have his/her board voting rights suspended until he or she has
563 successfully completed the education requirements of the previous year. The commission will
564 afford the board member 30 days to provide good cause for why he or she did not complete the
565 required education requirements for the previous year. Board members shall have 180 days to
566 successfully complete the continuing education requirements for the previous year.

567 Failure to successfully complete the education requirements shall prohibit a retirement
568 board member from serving beyond the conclusion of the term in which the failure took place.
569 In the event the non-complying retirement board member is an ex-officio member his or her term
570 shall cease upon notification to the retirement board by the commission of that non-compliance.

571 Each retirement board shall notify all prospective board members and board members of
572 the requirement to complete education requirements at the time of receiving information about
573 seeking election to a retirement board, or prior to being appointed to a retirement board.

574 The commission shall annually notify board members of the requirement to complete
575 continuing education.

576 The requirements established by this sub-division shall become effective for calendar
577 year 2007.

578 Section 17. Chapter 150E section 7 is hereby amended by adding the following new
579 subsection (e):

580 Any employer entering into a collective bargaining agreement with an employee
581 organization must provide a copy of said agreement to the retirement board to which the
582 employees covered by the agreement are members. All retirement systems must maintain files of
583 all active collective bargaining agreements which cover the systems members. The retirement
584 board shall review collective bargaining agreements for compliance with the provisions of
585 chapter 32.

586 Section 18. Chapter 32 section 21 is hereby amended in line 15 by adding the following
587 new sentence after the word “system”:

588 Each board shall maintain copies of all collective bargaining agreements which cover the
589 systems members and shall make such agreements available to the commission for review at
590 such time as the commission shall specify.